

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DONNY A. SINKOV, as Administrator of the
Estate of Spencer E. Sinkov, deceased,
DONNY A. SINKOV, and HARA SINKOV,
Plaintiffs,

-against-

DONALD B. SMITH, individually and in his
official capacity as Sheriff of Putnam County,
JOSEPH A. VASATURO, individually, LOUIS
G. LAPOLLA, individually, THE COUNTY OF
PUTNAM, New York, and AMERICOR, INC.,

Defendants,
-----X

07 Civ.2866 (CLB)

**AFFIDAVIT OF KIM BERG
IN OPPOSITION TO
DEFENDANTS' MOTIONS
FOR PARTIAL
SUMMARY JUDGMENT**

State of New York)
) ss:
County of Westchester)

KIM BERG, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before this Court and associated with Lovett & Gould LLP, attorneys for Plaintiffs in the above captioned matter. I submit this affidavit on Plaintiffs' behalves in opposition to Defendants' motions for partial summary judgment made pursuant to Rule 56 of the Federal Rules of Civil Procedure.

2. Annexed hereto as Exhibit 1 is a copy of the New York State Commission of Correction "Chairman's Memorandum No. 17-99" dated November 1, 1999.

3. Annexed hereto as Exhibit 2 is a copy of the November 21, 2005 letter from the State Commission of Correction to Sheriff Smith.

4. Annexed hereto as Exhibit 3 is a copy of the New York State Commission of Correction and Office of Mental Health's "Suicide Prevention Screening Guidelines" Form 330-ADM.

5. Annexed hereto as Exhibit 4 is a copy of the Putnam County Correctional Facility "Suicide Prevention Screening Guidelines" form.

6. Annexed hereto as Exhibit 5 is a copy of the New York State Commission of Correction "Chairman's Memorandum No. 16-2005" dated October 5, 2005.

7. Annexed hereto as Exhibit 6 is a copy of the New York State Commission of Correction "Chairman's Memorandum No. 10-2007" dated September 18, 2007.

8. Annexed hereto as Exhibit 7 is a copy of the relevant portions of the Basic Program Trainer's Manual.

9. Annexed hereto as Exhibit 8 is a copy of the Putnam County Correctional Facility Procedure #010199 regarding "Housing Unit Supervision Logbook Entries.

10. Annexed hereto as Exhibit 9 is a copy of the relevant portions of AmeriCor, Inc's November 2004 Policy Manual.

11. Annexed hereto as Exhibit 10 is a copy of the relevant portions of Schedule A to AmeriCor's contract with the County of Putnam which sets forth the services AmeriCor is to provide at the Putnam County Correctional Facility.

12. Annexed hereto as Exhibit 11 is a copy of the relevant portions of the AmeriCor, Inc. 2003 Procedure Manual

13. Annexed hereto as Exhibit 12 is a copy of the Inmate Medical Intake Record for Spencer E. Sinkov.

14. Annexed hereto as Exhibit 13 is a copy of Nurse Peter Clarke's Progress Notes dated May 20, 2006.

15. Annexed hereto as Exhibit 14 is a copy of the Final Report of the New York State Commission of Correction in the Matter of the Death of Spencer Sinkov.

16. Annexed hereto as Exhibit 15 is a copy of the May 20, 2006 "P-1" prepared by Defendant Joseph Vasaturo regarding Spencer Sinkov being placed on a 15 Minute Supervisory Check.

17. Annexed hereto as Exhibit 16 is a copy of the May 20, 2006 Mental Health Routing Sheet completed by Susan Waters.

18. Annexed hereto as Exhibit 17 is a copy of the October 23, 2006 letter from AmeriCor, Inc. to Commissioner Lamy regarding the preliminary report issued by the Commission of Correction with respect to the death of Spencer Sinkov.

19. Annexed hereto as Exhibit 18 is a copy of the relevant portions of the 50-h Transcript of Claimant Donny A. Sinkov dated December 8, 2006.

20. Annexed hereto as Exhibit 19 is a copy of the NHU logbook entries for May 20, 2006.

21. Annexed hereto as Exhibit 20 is a copy of the Alamo Ambulance Record for May 20, 2006.

22. Annexed hereto as Exhibit 21 is a copy of the Statement of Susan Waters dated May 20, 2006.

23. Annexed hereto as Exhibit 22 is a copy of the Final Report of the New York State Commission of Correction in the Matter of the Death of Norberto Rivera.

24. Annexed hereto as Exhibit 23 is a copy of the North Housing Unit logbook entries for November 15, 2003.

25. Annexed hereto as Exhibit 24 is a copy of the October 29, 2004 letter from Sheriff Smith to Commissioner Lamy regarding the preliminary report issued by the Commission with respect to the death of Norberto Rivera.

26. Annexed hereto as Exhibit 25 is a copy of the South Housing Unit logbook entries for May 20, 2006.

27. Annexed hereto as Exhibit 26 is a copy of the October 25, 2006 letter from Sheriff Smith to Commissioner Lamy regarding the preliminary report of the Commission with respect to the death of Spencer Sinkov.

28. Annexed hereto as Exhibit 27 is a copy of a photograph of food on the tray in Spencer Sinkov's cell.

29. Annexed hereto as Exhibit 28 is a copy of the relevant portions of the collective bargaining agreement between the County of Putnam, Putnam County Sheriff, and Putnam County Deputy Sheriff's Benevolent Association, Inc.

30. Annexed hereto as Exhibit 29 is a copy of the New York State Commission of Correction "Chairman's Memorandum No. 12-2007" dated October 31, 2007

31. Annexed hereto as Exhibit 30 is a copy of the September 28, 2004 memorandum from Undersheriff Convery to Captain LeFever and LeFever's reply memorandum dated October 4, 2004.

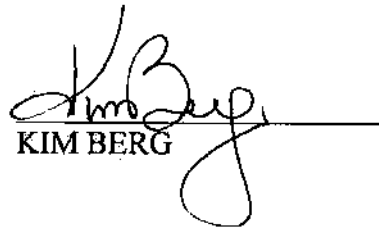
32. Annexed hereto as Exhibit 31 is a copy of the November 20, 2006 letter from Sheriff Smith to Chairman Stewart of the New York State Commission of Correction.

33. Annexed hereto as Exhibit 32 is a copy of the January 19, 2007 memorandum from Captain LeFever to all sergeants regarding interim staffing procedures.

34. Annexed hereto as Exhibit 33 is a copy of the Civil Case Discovery Plan and Scheduling Order entered in the above captioned matter.

35. For the reasons set forth in the accompanying memorandum of law, Defendants' respective motions for partial summary judgment should be denied in all respects.

WHEREFORE, it is respectfully submitted that Defendants' motions for partial summary judgment should be denied in all respects.



KIM BERG

Sworn to before me this
23rd day of May, 2008.



Notary Public

ANN B. FRANK
Notary Public, State of New York
No. 01FR5022348
Qualified in Westchester County
Commission Expires January 10, 20 10